IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

Civil Revision No.3073 of 1993

Date of Decision: 6.12.2006

M/s Liberty Leathers

Petitioner

versus

Haryana State and another

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

Present: Shri I.K.Mehta, Sr.Advocate with
Mrs.Ranjit Mehta and Shri M.S.Kohli, Advocates
for the petitioner
Ms. Mamta Singal Talwar, AAG Haryana
Shri Puneet Gupta, Advocate for
Haryana Financial Corporation

Jasbir Singh, J. (Oral)

The present dispute has arisen on account of registration of the sale deed on 22.11.1988, vide which, General Manager-cum-Secretary, Haryana Financial Corporation Chandigarh, sold 29 kanals 6 marlas of land alongwith building constructed thereon to the petitioner, for an amount of Rs.8,20,000/-. Sub-Registrar Gharaunda, after registration of the sale deed, impounded the same and referred the matter to the Collector, for determination under Section 47-A of the Indian Stamp Act, 1899, on the ground that as the machinery has also been sold along with land and the building, for an amount of Rs.6,10,000/-, as such, the sale deed has been executed for a lesser amount and an attempt has been made to under value price of the land, building and machinery sold. The Collector came to a

conclusion that the land, building and machinery was advertised for sale by one tender, subsequently, land and building was shown to have been sold for an amount of Rs.8,20,000/- and the machinery for an amount of Rs.6,10,000/-. As the sale deed was got executed for an amount of only Rs.8,20,000/-, there was an attempt to under value the price of the property and vide order dated 16.12.1988 ordered that additional stamp duty be paid on an amount of Rs.6,10,000/-. The petitioner went in appeal, which was dismissed. Record reveals that the appellate court below did not agree with the finding given by the Collector, however, by taking note of the provisions of Section 6(2) of the Registration Act, 1908 (in short the Act), it was ordered that the additional stamp duty is payable.

To resolve the controversy, it is necessary to look into the provisions of Section 6(2) of the Act, which reads thus:-

> *"Immovable property includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass."*

The appellate authority has opined that as the machinery was fixed on the base, with nuts and bolts, as such, it can be termed as immoveable property. This Court feels that the opinion given by both the Courts is not justified. There is no evidence on record that the machinery was fastened on the earth in such a manner that it was not possible to remove the same. Otherwise also, it has come on record that the machinery pertains to a rice sheller, whereas the purchaser of the property was engaged in business of Leather and Leather articles.

A similar controversy came up for hearing before the Hon'ble Supreme Court in *Sirpur Paper Mills Ltd. v. Collector of Central Excise, Hyderabad, (1998)1 SCC 400*. In that case, dispute was with regard to payment of excise duty on the machinery installed in the premises of the petitioner in that case. Question arose as to whether the machinery, put up in the factory, was moveable or immoveable property. The Hon'ble Supreme Court observed thus:-

> *"5. Apart from this finding of fact made by the Tribunal, the point advanced on behalf of the appellant, that whatever is embedded in earth must be treated as immovable property is basically not sound. For example, a factory owner or a householder may purchase a water pump and fix it on a cement base for operational efficiency and also for security. That will not make the water pump an item of immovable property. Some of the components of the water pump may even be assembled on site. That too will not make any difference to the principle. The test is whether the paper-making machine can be sold in the market. The Tribunal has found as a fact that it can be sold. In view of that finding, we are unable to uphold the contention of the appellant that the machine must be treated as a part of the immovable property of the Company. Just because a plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property.*
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> *6. A further argument was made that the entire machinery as it is cannot be bought and sold because the machinery will have to be dismantled before being sold. The Tribunal has*

pointed out that the appellant had himself bought several items and completed the machinery. It had purchased a large number of components and fabricated a few and manufactured the paper-making machine at site. If it is sold it has to be dismantled and reassembled at another site. We do not find any fault with the reasoning of the Tribunal on this aspect of the matter."

A similar controversy also came up for consideration before Hon'ble Supreme Court in *K.L.Selected Coal concerned v. S.K.Khanson & Co., AIR 1971 Supreme Court 437*. In that case, there was a dispute regarding registration or non-registration of a compromise, vide which, machinery was transferred by one party in favour of another. The Hon'ble Supreme Court, while deciding the dispute has observed thus:-

"The trial Court did not decide the question whether the properties charged under the decree are immovable properties or not. It opined that question has to be decided at the time the properties are brought to sale. But in appeal the High Court came to the conclusion that from the tenor of the compromise decree. It is clear that those properties are movable properties and therefore there was no need to register the decree. This is essentially a finding of fact. Unless it is shown that the items of machinery mentioned in the decree over which a charge had been created had been permanently embedded to earth, it is not possible to come to the conclusion that those items of machinery are immovable properties. If they are not immovable properties as held by the High Court, then there

was no need to register the decree. It was for the judgment-debtor to show that the decree was invalid for the reasons mentioned by him. He has failed to establish that fact."

In the present case also, there is no evidence on record that the property was permanently embedded in the earth and it was not possible to remove the same. Furthermore, it is apparent from the records that purchaser of the machinery was engaged in manufacturing of leather articles and definitely the machinery, which was fixed to run a rice sheller was to be removed from the site in dispute. Once, there is no evidence on record that the machinery was permanently fixed in the earth and it was not possible to remove the same, this Court feels that it was not obligatory for the seller and the buyer to pay additional stamp duty as ordered by the Courts below.

In view of facts mentioned above, this revision petition is allowed, order under challenge is set aside. By way of abundant caution, it is observed that in future, the Haryana Financial Corporation and other financial institutions should invite tenders to sell land, building and the machinery, which is not permanently embedded in the earth, by calling separate tenders. Shri Gupta is directed to bring this order to the notice of the Corporation and other financial institutions.

December 06, 2006 **(Jasbir Singh)**
gk **Judge**